IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajpal Singh. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 864/2005 against the Order dated 5-7-2005 passed by the Addl. Sessions Judge, Anoopgarh, district Sri Ganganagar, in Criminal Revision No. 57/2005.

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Date of Order: August 23, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Devender Singh Dev, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By this criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 5-7-2005 passed by the Additional Sessions Judge, Anoopgarh, district Sri Ganganagar (for short, "the Revisional Court" hereianfter) in Criminal Revision Petition No. 57/2005, whereby the revision petition filed by the petitioner against the order dated 28-6-2005 passed by the Judicial Magistrate, Anoopgarh, district Sri Ganganagar (for short, "the trial Court" hereinafter) in Criminal Misc. Case No. 172/2005, was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully perused the orders passed by the Revisional Court as well as the trial Court.

On 16-6-2005, the District Transport Officer, Sri Ganganagar checked bus No. RJ.13-P-1187 while it was going from Kamaraniya to Anoopgarh. The said bus was having valid permit to run on the way to Srivijaynagar to Banda Colony, Anoopgarh, for which road tax of Rs. 881/- was outstanding. At the time of checking the said bus, it was found being plied on Kamraniya to Anoopgarh route without having any valid permit and it was being plied without depositing the road tax and special road tax, therefore, it was seized on account of non-deposit of Rs.20,910/- towards monthly special road tax, which was outstanding as per the Notification dated 22-7-2000 issued under Section 4 (B) of the Rajasthan Motor Vehicles Taxation Act, 1951 (for short, "the Taxation Act of 1951" hereinafter).

The petitioner filed an application under Section 457 of the Code, which was dismissed by the trial Court vide order dated 28-6-2005 and the revision against that order has been dismissed by the Revisional Court vide impugned order dated 5.7.2005; hence this criminal miscellaneous petition.

In the instant case, the vehicle in question has been seized by the District Transport Authority for plying the vehicle in violation of the provisions of the Taxation Act, 1951 by not

paying the due tax, may be special road tax, permit etc. Section 16 of the Taxation Act, 1951 creates a bar to the jurisdiction of the civil and criminal courts in the matter of taxation and provides that the liability of a person to pay the tax shall not be questioned or determined otherwise than as provided in this Act or in rules made thereunder and no prosecution, suit or other proceeding shall lie against any officer of the State Government for any thing in good faith done or intended to be done under this Act.

Section 17 of the Taxation Act, 1951 provides that any police officer in uniform not below such rank, as may be prescribed and any officer of the Transport Department not below the rank of a Sub-Inspector and any officer of the Commercial Taxation Department not below the rank of an Inspector posted at the check posts controlled by the Commercial Taxes Department, may require the driver of any motor vehicle in any public place to stop the vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that the amount of tax due in accordance with the provisions of this Act in respect of such vehicle has been paid. Sub-section (2) of Section 17 provides that where any tax due in respect of such vehicle has not been paid, any officer referred to in sub-section (1), may seize and detain such vehicle and take or cause to be taken such steps as

he may consider necessary for the safe custody of the vehicle until it is produced before the Taxation Officer of the area concerned within a reasonable time or the tax due in respect of the vehicle is paid; provided that where the vehicle so seized is a non-transport vehicle, such officer may release the vehicle after obtaining a bond for a sum not exceeding Rs.500/- from the driver or the owner or any person having possession or control of the vehicle, as the case may be, for depositing the tax within the period specified in the bond, provided further that the provisions of sub-section (2) shall not apply to non-transsport vehicles registered in Rajasthan. Sub-section (3) of Section 17 provides that the transport vehicle seized under sub-section (2) shall not be released unless full tax due in respect of such a vehicle has been paid. Sub-section (4) of Section 17 provides that where the vehicle has been seized or detained under sub-section (2), the owner or person incharge of the motor vehicle may apply to the Taxation Officer or any officer authorised by the State Government together with the relevant documents for the released of such vehicle and such officer shall, after the verification of the documents and on being satisfied that no tax, penalty and interest is due, by an order, release the vehicle.

Thus, from the perusal of the provisions of Section 16 of the Taxation Act, 1951, it is clear that no Court, civil or criminal, has jurisdiction to deal with the matter where the

liability of a person to pay tax under the provisions of the Taxation Act, 1951 is involved.

On the similar facts, a petition filed by the State of Rajasthan came to be disposed of by this Court, being S.B. Criminal Misc. Petition No. 68/2000, vide order dated 21-4-2005 by holding that the vehicle was seized by the Taxation Authorities for violation of law and it was held that it is not possible to claim the possession of the vehicle by the owner under Section 457 of the Code. The jurisdiction to release the vehicles rests with the taxation authorities because it was not under the provisions of the Code and that vehicle was seized under the Rajasthan Motor Vehicles Taxation Act, 1951. There was a clear bar in the jurisdiction of the Civil and Criminal Court. Setting aside the order passed by the Additional Sessions Judge, Churu, this Court released the vehicle and cancelling the Supurdginama, a direction was issued to the respondents, the vehicle owner, to surrender the vehicle before the taxation authority.

This Court, in S.B. Criminal Misc. Petition No. 904/2002, the District Transport Officer Vs. Uday Singh decided on 24-3-2004; S.B. Criminal Misc. Petition No. 576/2000, State of Rajasthan Vs. Bhanwar Lal decided on 28-7-2004; and S.B. Criminal Misc. Petition No. 630/2003, Mangi Lal Vs. State of Rajasthan decided on 20-11-2003, held that it is settled by

various decisions of this Court that criminal Courts will have no jurisdiction to grant or refuse custody of the vehicle if it has been seized for non-payment of the tax.

From a bare reading of the plain language of Sections 16 and 17 of the Taxation Act, 1951, it is more than clear that a bar has been created by the statute i.e. the Taxation Act, 1951, to take away the jurisdiction of the civil and criminal Court to deal with the matters involving the question of determination of tax payable under the Taxation Act, 1951. A detailed procedure has been provided under Section 17 of the Taxation Act, as noticed above, where the vehicle is seized in violation of the provisions of the Taxation Act, 1951, including release of the vehicle by the Taxation Authorities. There is absolutely no provisions under the Code, by which the question of determination of tax and non-payment of tax can be decided. In the circumstances, when there is no such provision under the Code, by which the criminal court can determine the question of tax payable under the Taxation Act, 1951 then exercise the power by the criminal court to release the vehicle under Section 451 or 457 of the Code is beyond jurisdiction of the criminal court, keeping in view the bar created by Section 16 of the Taxation Act, 1951. In the circumstances, therefore, the orders dated 28-6-2005 and 5-7-2005 passed by the trial Court and the Revisional Court respectively, are perfectly legal and in

consonance with the provisions of the Taxation Act, 1951 and call for no interference.

Consequently, the criminal miscellaneous petition is dismissed.

(H.R. PANWAR), J.

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